



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 99 206 50039 Office: Vermont Service Center

Date: AUG 21 2000

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be dismissed.

The petitioner, an import/export company, seeks authorization to employ the beneficiary temporarily in the United States as president of its new office. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity, that the beneficiary has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition, or that the intended U.S. operation, within one year of the approval of the petition, would support an executive or managerial position.

On appeal, the petitioner's accountant argued that the beneficiary had been employed by the foreign entity for several years as a "buyer, salesperson and manager" and that the company expected to have sales of two million dollars. The petitioner submitted additional invoices showing that the U.S. entity has been doing business.

The Associate Commissioner dismissed the appeal, reasoning that the petitioner had submitted insufficient evidence to establish that the beneficiary had been or would be employed in a primarily managerial or executive capacity, that the beneficiary has at least one continuous year of full-time employment abroad with a qualifying entity within the three-year period preceding the filing of the petition, or that the intended U.S. operation, within one year of the approval of the petition, would support an executive or managerial position.

The Associate Commissioner also noted, beyond the director's decision, that the petitioner had submitted insufficient evidence to establish that there is a qualifying relationship between the U.S. and foreign entities or that it had secured sufficient physical premises to house a new office.

On motion, counsel states that there is "sufficient evidence/documentation in the file to overcome the denial letter." Counsel submits nothing further on motion.

8 C.F.R. 103.5(a)(2) states, in pertinent part, that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

8 C.F.R. 103.5(a)(4) states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

Inasmuch as the motion fails to state the new facts to be provided, and is not supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy, the motion will be dismissed in accordance with 8 C.F.R. 103.5(a)(4).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The motion is dismissed.